

REMARKS

This response is directed to the Office Action of 11/17/2005, filed by the Examiner following applicant's submission of an appeal brief in this matter. Examiner takes the position that the subject application is eligible for the transitional procedure of 37 CFR 1.129(a), and, because the requisite fee as set forth in 37 CFR 1.17(r) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to the above noted 37CFR 1.129(a). Accordingly, applicant's fourth submission, after final, filed on 8/19/05, has been entered.

Claims 1-6, 9, 14-21, 24, 26-56, and 58-59 were pending in the subject application prior to the response set forth herein, and so were examined on the merits in the outstanding Office Action. Claim 44 has been previously been found allowable and remains so in the pending office action.

Response to Arguments

In the outstanding Office Action, the rejection under 35 USC 112, second paragraph was withdrawn in light of applicant's assertion that the term "the porous inorganic material is formed *in situ*" is clear and that it means that the matrix is formed as part of the microanalytical device recited in the preamble of the claims (see applicant's Appeal Brief filed on 8/19/05, pages 8-9).

The rejection under 35 USC 103(a) as being unpatentable over Dunn et al. (US patent NO. 5,200,334) in view of Reetz et al. was withdrawn in light of applicant's assertion that the term "the porous inorganic material is formed *in situ*" means that the matrix is formed as part of the microanalytical device and not any reaction vessel (see applicant's Appeal Brief filed on 8/19/05, page 14, second and third paragraphs).

Claim Objections

Applicant responds to the objection to claims 1, 9 and their respective dependent claims because of the term "in step (b)" by deleting such term from the claims. This deletion is appropriate because the steps of the recited methods are not labeled. Such deletion also fully responds to Examiner's objection.

Claim Objections – 35 USC § 102

Claims 45-48, 55-56 and 58-59 were rejected under 35 USC 102(b) as being anticipated by Lochhead et al. (US Patent No. 6,039,897), hereinafter Lochhead.

Applicant has responded to this rejection by amending independent claims 45-46 to make them dependent on independent claim 44, previously allowed by Examiner. Such amendment places claims 45-46 in allowable form. Claims 47-48 now depend from either allowed claim 44 or claim 46 dependent there from, and are also in allowable form.

Claims 55-56 now depend from either allowed claim 44 or a claim dependent allowed claim 44.

Claim 58 has been amended to incorporate the allowed subject matter of claim 44 therein and claim 59 depends there from.

Applicant's proposed amendments fully address the rejection of claims 45-48, 55-56 and 58-59 under 35 USC 102(b) and place such claims in allowable form.

Claim Rejections – 35 USC § 103

Claims 9, 14-15, 28-32 and 37-40 were rejected under 35 USC 103(a) as being unpatentable over Dunn et al. (US Patent No. 5,200,334) in view of Reetz et al. (Biotechnology and Bioengineering, Vol. 9:527-534, 1996) and Lochhead.

Independent claim 9 has been amended to depend from allowed independent claim 44. Claim 14 has been cancelled and claim 15 depends from newly amended claim 9.

Each of claims 28-32 either depend from newly amended dependent claim 9 or from an intervening claim dependent on claim 9.

The amendments to claims 9, 14-15, 28-32 and 37-40 as set forth above place such claims in allowable form.

Claims 46-47, 49-50 and 52-54 were rejected under 35 USC 103(a) as being unpatentable over Lochhead in view of Avnir et al. (US Patent No. 5,300,564) and Swenberg et al. (US Patent No. 6,240,790).

Independent claims 46-47 have been amended to depend from allowed claim 44. Claims 49-50 depend from newly amended claim 46, and claims 52-54 either depend from newly amended claim 46 or an intervening claim dependent thereon.


The amendments to claims 46-47, 49-50, and 52-54 as set forth above place such claims in allowable form.

Conclusion

For all of the above reasons, it is submitted that the pending claims define an invention that is patentable over the art. As the application should now be in condition for allowance, a prompt indication to that effect would be appreciated. If the Examiner has any questions concerning this communication, he is welcome to contact Michael Beck at (650) 485-3864

Respectfully submitted,

By:


Harry G. Thibault
Registration No. 26,347

Reed Intellectual Property Law Group
1400 Page Mill Road
Palo Alto, California 94304-1124
(650) 251-7700 Telephone
(650) 251-7739 Facsimile

F:\Document\5000\0065\Amend 1.111 (11-17-05 OA).DOC